

CGB-CC-0466

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VOE Counsel, Former Judge of Compensation Claims

March 8, 2006

**Via Fed-Ex**

Office of the Secretary  
Federal Communications Commission  
Attention: CGB Room 3-B431  
9300 East Hampton Drive  
Capitol Heights, MD 20743

Dear Sir/Madam:

We represent Captive View Advertising, Inc., a Florida corporation ("Captive View"), the owner and producer of Latin Late Night, a multi-cultural entertainment and variety television show locally produced in Jacksonville, Florida. Captive View is seeking an exemption from the FCC's closed captioning requirement with respect to Latin Late Night, based upon the undue burden standard. This letter, along with the attached Affidavit of Roger B. Strecker, Captive View's President and Chief Executive Officer, constitutes Captive View's petition for an exemption in accordance with 47 C.F.R. § 79.1 (f).

Latin Late Night, which is entering its third year of production, airs on Fridays from 1:00 a.m. to 1:30 a.m., EST. on WJXT-TV, an independent broadcast station operating in Jacksonville, Florida. Latin Late Night appeals to a predominately Hispanic viewing audience in the Northeast Florida / Southeast Georgia area. The show is part live and part scripted. A portion of the show's segments are in Spanish, while the remainder is in English. Latin Late Night's production cycle runs for thirteen (13) consecutive live weeks, followed by thirteen (13) consecutive repeat shows. On an annual basis, there are twenty-six (26) live shows and twenty-six (26) repeats.

Fr. Myers	Miami	Orlando	Pensacola	Sarasota	Tallahassee	Tampa
2080 McGregor Blvd., Suite 100 Ft. Myers, FL 33901 Phone: (239) 226-1660 Fax: (239) 226-1661	2875 NE 191st Street, Suite 802 Aventura, FL 33180 Phone: (305) 466-4401 Fax: (305) 466-4404	1900 Summit Tower Blvd Suite 440 Orlando, FL 32810 Phone: (407) 660-0333 Fax: (407) 660-0444	121 S. Palafox Place, Suite A Pensacola, FL 32502-5635 Phone: (850) 434-7522 Fax: (850) 437-9700	P.O. Box 49137 Sarasota, FL 34230 Phone: (941) 955-0333 Fax: (941) 955-2510	669 East Jefferson Dr. Tallahassee, FL 32301 Phone: (850) 222-6406 Fax: (850) 222-6408	4320 W. Kennedy Blvd. Tampa, FL 33609 Phone: (813) 222-8880 Fax: (813) 222-8881

In his Affidavit, Mr. Strecker testifies to the financial resources of Captive View and the resultant strain upon the company imposed by the closed captioning requirement. In this letter we will discuss the specific factors considered by the Federal Communications Commission (FCC) in determining whether the closed captioning requirement imposes an undue burden upon Captive View. Those factors are as follows:

1. *The nature and cost of the closed captioning for the programming.*

Attached to Mr. Strecker's Affidavit is a quotation for closed captioning from Easy Edit Video, a supplier of closed captioning in the Jacksonville market. The cost of providing closed captioning for both the English and Spanish portions of Latin Late Night is \$607.23 per show. The bilingual nature of the program necessarily increases the cost of furnishing closed captioning. Over the course of producing 26 live shows per year, the annual projected cost of furnishing closed captioning for Latin Late Night is \$15,787.98.

2. *The impact on the operation of the provider or program owner.*

Closed captioning would result in an undue financial burden upon Captive View. As set forth in Mr. Strecker's Affidavit, the total budgeted production costs for each live show of Latin Late Night are approximately \$2,150.00. Twenty-eight percent (28%) of the total production costs are directly attributable to closed captioning. As a matter of fact, the projected expenses of closed captioning are the single largest component of Latin Late Night's overall production budget.

The total gross revenues generated by Latin Late Night during 2005 were \$9,743,00, which accounts for approximately 11% of Captive View's total gross revenues of \$84,372,00 from all sources for the same time period. As a percentage of total gross revenues, the projected annual closed captioning expenses exceed Latin Late Night's gross revenues by one hundred and sixty-two percent (162%), based upon 2005 revenues. When considering the impact of closed captioning upon Captive View's overall operations, the results are still remarkable. The projected annual expense of closed captioning the Latin Late Night show represents nearly nineteen percent (19%) of Captive View's overall gross revenues during 2005.

By analogy, under the FCC's self-implementing exemptions, a closed captioning expenditure- to- gross revenue ratio exceeding 2% on a per channel basis is sufficient to exempt a video programming provider from the closed captioning requirement. Captive View, on the other hand, would be required to expend substantially more than 2% of its revenues on captioning, which is economically burdensome.

3. The financial resources of the provider or program owner, including efforts to solicit captioning assistance from the distributors of its programming and the distributors' responses.

The revenue-generating operations of Captive View, in addition to the production of Latin Late Night, consist of the following: Indoor display advertising; publication of apartment/condominium reference guides; and consulting services. Even though Captive View has a diversified operation, if the Latin Late Night show cannot generate a profit on its own, there would be no compelling financial reason to continue production of the show.

Captive View's broadcast provider, WJXT-TV, has not offered any financial or technical assistance to Captive View with respect to closed captioning. The parties entered into a Television Advertising Agreement on or about June 14, 2004, relative to production of Latin Late Night. Under the terms of the parties' agreement, Captive View is responsible for 100% of the costs of providing closed captioning.

4. The type of operation of the provider or program owner.

The nature of Captive View's business is advertising and television production. Captive View has been in business in Jacksonville, Florida since 1997.

5. Any available alternatives that might constitute a reasonable substitute for the closed captioning requirements...

Certain Spanish language segments of Latin Late Night are shown in subtitles. To the extent subtitling is used, it would serve as an alternative to closed captioning.

6. Other factors the petitioner deems relevant to the Commissions's final determination.

Latin Late Night is the only locally produced television show in the greater Jacksonville area at this time that caters to a predominately Hispanic audience. In fact, Latin Late Night is the only Spanish programming aired on WJXT-TV in Jacksonville. In the event financial relief is not afforded to Captive View by way of a closed captioning exemption, it may be economically unfeasible for Captive View to continue funding the Latin Late Night program. If the show is ultimately cut, there would be a cultural void in the Hispanic community in Jacksonville, since there is no similar program offering such ethnic diversity currently on the local television market.

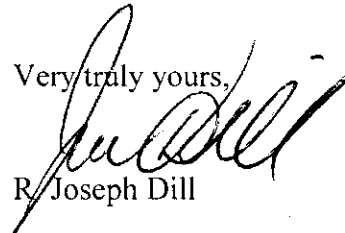
One of the goals of Latin Late Night is to promote up-and-coming talent of Hispanic descent in the local community. If Latin Late Night cannot survive financially, the opportunities to expose

Office of the Secretary  
Federal Communications Commission  
March 8, 2006  
Page -4-  
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Hispanic artists and entertainers in the local television market will have been squandered.

Thank you for your consideration of our client's petition for an exemption from FCC's closed captioning requirement. Please direct any replies or inquiries you may have concerning this matter to the undersigned's attention.

Very truly yours,

  
R. Joseph Dill

RJD  
enclosure

AFFIDAVIT OF ROGER B. STRECKER

STATE OF FLORIDA  
COUNTY OF DUVAL

Before me, the undersigned authority, personally appeared Roger B. Strecker, who makes this Affidavit in the County and State aforesaid, and after being duly sworn by me, deposes and says:

1. Affiant is the President and Chief Executive Officer of Captive View Advertising, Inc., a Florida corporation ("Captive View"), and is duly authorized on behalf of said corporation to make this Affidavit.

2. Affiant is competent to testify to the matters stated herein, and the matters stated herein are within the Affiant's personal knowledge and are true and correct.

3. Captive View keeps regular books of account, and the keeping of said books of account is in the charge or under the supervision of the Affiant.

4. Captive View is an advertising and production company. One of its sources of revenue is production of a television show called "Latin Late Night", which is broadcast locally in Jacksonville, Florida and surrounding areas on WJXT-TV. Latin Late Night caters predominately to viewers of Hispanic descent in Northeast Florida and Southeast Georgia. The show airs from 1:00 a.m. to 1:30 a.m. on Fridays and has a thirteen (13) week live production schedule, followed by thirteen (13) weeks of repeat shows. Portions of Latin Late Night are broadcast in English, while other segments are broadcast in Spanish.

5. In addition to the revenues derived from Latin Late Night, other sources of revenue for Captive View include the following: indoor display advertisements, publication of apartment / condominium reference guides, and consulting services.

6. The gross revenues for Captive View from all sources during fiscal year 2005 were \$84,372.00. The gross revenues attributable to Latin Late Night for the same time period were \$9,743.00, which accounts for approximately 11% of Captive View's overall 2005 gross revenues.

7. Since Latin Late Night is broadcast partially in English and partially in Spanish, the expenses associated with bilingual closed captioning must be considered. Captive View obtained a quotation for closed captioning of the show from Easy Edit Video in Jacksonville, Florida, a reputable video editing service. A copy of the quotation is attached hereto marked Exhibit "A" and by reference made a part hereof. The quotation does not include any charges for translation. The total closed captioning cost per show is \$607.23. During the course of producing 26 live shows of Latin Late Night each year, the total projected closed captioning expenses on an annualized basis are \$15,787.98.

8. On average, it costs approximately \$2,150.00 to produce a single live show of Latin Late Night. The itemized, budgeted production costs for each live show, and their corresponding percentage of the total production budget, are as follows:

Closed Captioning	- \$607.23	(28 %)
Camera / Photography	- \$500.00	(23 %)
Film Editing/Studio	- \$400.00	(19 %)
Television Air Time	- \$350.00	(16 %)
Talent Acquisition	- \$300.00	(14 %)
TOTAL	<u>\$2,157.23</u>	<u>100%</u>

By accounting for twenty-eight percent (28%) of Latin Late Night's total budgeted production costs, closed captioning represents the single largest expense of producing the show.

9. As a percentage of gross revenues, the projected annual closed captioning expenses of \$15,787.98 actually exceed Latin Late Night's gross revenues (based upon 2005 figures) by one hundred sixty-two percent (162%). In addition thereto, such closed captioning expenses account for nearly nineteen percent (19%) of Captive View's total gross revenues from all sources in 2005.

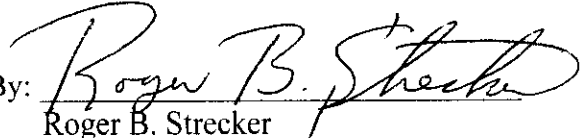
10. Captive View and WJXT-TV entered into a Television Advertising Agreement on or about June 14, 2004, which addresses all facets of the Latin Late Night production and broadcast. Under the terms of said agreement, Captive View is solely responsible for all closed captioning expenses associated with Latin Late Night. Furthermore, WJXT-TV provides no technical assistance to Captive View with respect to closed captioning.

11. Certain Spanish language segments of Latin Late Night are shown in subtitles.

12. Upon information and belief, Latin Late Night is the only locally produced and broadcasted entertainment show in the Jacksonville market that is targeted to reach the Hispanic viewing audience.

FURTHER AFFIANT SAYETH NAUGHT.

**Captive View Advertising, Inc.**

By:   
Roger B. Strecker  
President & C.E.O.

1871





8431 Baymeadows Way  
Jacksonville, Florida 32256

Phone # (904) 730-9999

Fax # (904) 730-0412

## PROJECT QUOTE

Date	Project Quote #
3/3/2006	99

Name / Address

Capti View Advertising  
9802 Baymeadows Road #12-112  
Jacksonville, Florida 32256

P.O. No.

Item	Description	Qty	Rate	Total
Edit/Closed Cap...	BILINGUAL Edit: Closed Captioning Price per show		550.00	550.00T
Betacam 30	Price includes transcription, encoding and transfer Tape: Betacam SP 30		17.50	17.50T
www.easyeditvideo.com		Subtotal		\$567.50
		Sales Tax (7.0%)		\$39.73
		Total		\$607.23

Signature

EXHIBIT "A"